# Exhibit A

Case 3:08-cv-03804-EMC Document 5 Filed 08/14/2008 Page 4 of 57 1 KATHLEEN MAYLIN (State Bar No. 155371) JOHN A. ONTIVEROS (State Bar No. 225706) 2 JACKSON LEWIS LLP 199 Fremont Street, 10th Floor 3 2000 AUG 11 P 2: 45 San Francisco, California 94105 Telephone: (415) 394-9400 4 Facsimile: (415) 394-9401 5 D Wagnet Deputy Clerk Attorneys for Defendant 6 CHERNE CONTRACTING CORPORATION 7 SUPERIOR COURT OF THE STATE OF CALIFORNIA 8 COUNTY OF CONTRA COSTA 9 10 VICTOR GONZALEZ. Case No. MSC08-01746 11 Plaintiff. DEFENDANT'S NOTICE TO STATE 12 COURT OF REMOVAL ٧. 13 [28 U.S.C. §1441 (a) and (b) – Diversity CHERNE CONTRACTING CORPORATION, a of Citizenship Jurisdiction] 14 business entity of unknown form; and DOES 1 TO 25, INCLUSIVE, 15 BY FAX Defendants. 16 17 TO THE SUPERIOR COURT FOR THE COUNTY OF CONTRA COSTA: 18 PLEASE TAKE NOTICE that on August 8, 2008, Defendant CHERNE CONTRACTING 19 CORPORATION ("Defendant") filed a Notice of Removal of Action under 28 U.S.C. § 1441(a) 20 and (b) with the United States District Court for the Northern District of California. A true and 21 correct copy of Defendant's Notice of Removal, including all exhibits, is attached hereto as 22 Exhibit 1. 23 Pursuant to 28 U.S.C. § 1441(b), the filing of this Notice of Removal effects the removal 24 of this action and the above-captioned California State Court shall proceed no further unless and 25 until the case is remanded. 26 111 27 111 28 DEFENDANT'S NOTICE TO STATE COURT OF REMOVAL [28 U.S.C. §1441 (a) and (b) - Diversity of Citizenship Jurisdiction] Case No. MSCO8-01746

Page 5 of 57 Case 3:08-cv-03804-EMC Document 5 Filed 08/14/2008 Dated: August 8, 2008 JACKSON LEWIS LLP athleen Maylin ohn A. Ontiveros Attorneys for Defendant CHERNE CONTRACTING CORPORATION 

# Exhibit 1

Case 3:08-cv-03804-EMC Document 5 Filed 08/14/2008 Page 7 of 57 1 Kathleen Maylin (State Bar No. 155371) JOHN A. Ontiveros (State Bar No. 225706) 2 JACKSON LEWIS LLP 199 Fremont Street, 10th Floor 3 San Francisco, California 94105 Telephone: (415) 394-9400 4 Facsimile: (415) 394-9401 5 E-filing Attorneys for Defendant 6 CHERNE CONTRACTING CORPORATION 7 8 UNITED STATES DISTRICT COURT 9 NORTHERN DISTRICT OF CALIFORNIA 10 11 VICTOR GONZALEZ, 12 Plaintiff, NOTICE OF REMOVAL OF ACTION TO FEDERAL COURT 13 ٧. [28 U.S.C. §1441(a) and (b) - Diversity of 14 CHERNE CONTRACTING CORPORATION. Citizenship Jurisdiction a business entity of unknown form; and DOES 15 1 TO 25, INCLUSIVE, Defendants. 16 17 18 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN 19 DISTRICT OF CALIFORNIA, PLAINTIFF VICTOR GONZALEZ, AND HIS ATTORNEYS 20 OF RECORD: 21 PLEASE TAKE NOTICE that Defendant Cherne Contracting Corporation ("Defendant") 22 hereby removes to this Court the State Court action described below. 23 1. On July 8, 2008, Plaintiff Victor Gonzalez ("Plaintiff") commenced the action of 24 Victor Gonzalez, Plaintiff v. Cherne Contracting Corporation, a business entity of unknown form, 25 and DOES 1 to 25, Defendants in the Superior Court for the County of Contra Costa, Unlimited 26 Jurisdiction, Case No. C 08-01746, by filing a Complaint for Wrongful Termination in Violation 27 of Public Policy, Wrongful Constructive Termination, Violation of Labor Code Section 6400 et 28 seq., and Unfair Business Practice In Violation of Business and Professions Code Section 17200 NOTICE OF REMOVAL OF ACTION TO FEDERAL COURT [28 U.S.C. §1441 (a) and (b) –Diversity of Citizenship Jurisdiction] Case No.

("Complaint"), against Defendant. Plaintiff's Complaint contains the following causes of action: wrongful termination in violation of public policy (first cause of action); wrongful constructive termination (second cause of action); violation of California Labor Code Section 6400 et seq. (third cause of action); and unfair business practice violation of California Business and Professions Code Section 17200 et seq. (fourth cause of action).

- 2. On July 17, 2008 Plaintiff served Defendant, through its agent for service of process, a copy of the Summons, Civil Case Cover Sheet, Complaint for Damages, Notice of Case Management Conference, Notice to Plaintiff, Notice to Defendant, Case Management Statement, Contra Costa Stipulation and Order to Attend ADR and Delay First Case Management Conference 90 Days, and Contra Costa County Superior Court Alternative Dispute Resolution Information Sheet. True and correct copies of the aforementioned documents, along with the Service of Process Transmittal from Defendant's agent for service of process, are attached hereto as **Exhibit A**. On August 7, 2008, Defendant filed Cherne Contracting Corporation's Answer to Plaintiff's Unverified Complaint, a true and correct copy of which is attached as **Exhibit B**.
- 3. This is a civil action of which this Court has original jurisdiction under 28 U.S.C. §1332(a), and is one that may be removed to this Court by Defendant pursuant to 28 U.S.C. §1441(a) and (b) because it is a civil action between citizens of different states and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interests and costs.
- 4. Defendant is informed and believes Plaintiff was at the time he filed this action and still is a citizen and resident of the State of California.
- 5. Defendant presently is a citizen of Michigan and Minnesota and not California and was so at the time Plaintiff filed his Complaint. A corporate defendant "shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business ..." 28 U.S.C. § 1331(c)(1). At the time Plaintiff filed his Complaint in Contra Costa Superior Court and at the time Defendant moves the Court for removal of this action, Defendant was incorporated under the laws of the State of Michigan. See Attached Exhibit C, Declaration of Dominique Najjar, ¶ 2. Defendant's principal place of business currently is, and was at the time Plaintiff filed his Complaint, in the State of Minnesota, not

6. The presence of "Doe" defendants has no bearing on diversity with respect to removal. 28 U.S.C. § 1441(a).

8

9

7. Without conceding that Plaintiff is entitled to damages or could recover damages in any amount whatsoever, the matter in controversy in this action will more likely than not exceed \$75,000. 28 U.S.C. §1332(a). The matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, for the following reasons:

10

11

12

13

14

8. Plaintiff's complaint alleges he was employed by Defendant and wrongfully constructively discharged on July 21, 2007, and has suffered lost income and career opportunities, and other economic losses. (Complaint, ¶¶ 21, 26, 34, 42, 50, and prayer ¶ A.) Between approximately August 13, 2006 and July 21, 2007, Plaintiff worked approximately forty-three (43) weeks for Defendant, and earned approximately \$65,340.71 total in wages. Exhibit C, Decl. of Najjar, ¶ 3. On average, Plaintiff earned \$1,519.55 per week in wages during his employment with Cherne. The project Plaintiff worked on for Defendant was substantially completed on April 16, 2008. Exhibit C, Decl. of Najjar, ¶ 4. Assuming for purposes of this analysis only that Plaintiff was successful on his claims, the amount in controversy of Plaintiff's lost income alone from July 21, 2007 through April 16, 2008 (approximately 39 weeks), is approximately \$59,262.45.

20

21

22

9. In addition to wages, Plaintiff received benefits during his employment with Cherne for: (a) health and welfare; (b) pension; (c) annuity; and (d) other benefits. Between approximately August 13, 2006 and July 21, 2007, Plaintiff worked approximately forty-three (43) weeks for Defendant, and received approximately \$22,449.12 total in benefits. Exhibit C. Decl. of Najjar, ¶ 5. On average, Plaintiff received \$522.07 per week in benefits during his employment with Cherne. The project Plaintiff worked on for Defendant was substantially

completed on April 16, 2008. Exhibit C, Decl. of Najjar, ¶ 4. Assuming for purposes of this

23 24

25

26

27

4

5

6

7

8

9

10

12

11

13 14

15

16 17

18

19

20

21

22 23

24

25

26

27

28

analysis only that Plaintiff was successful on his claims, the amount in controversy of Plaintiff's lost benefits from July 21, 2007 through April 16, 2008 (approximately 39 weeks), is approximately \$20,360.73.

- Assuming for purposes of this analysis only that Plaintiff was successful on his 10. claims, the amount in controversy of Plaintiff's lost income (\$59,262.45) and benefits (\$20,360.73) is approximately \$79,623.18, which exceeds the matter in controversy requirement under 28 U.S.C. §1332(a).
- Further, Plaintiff's prayer for relief on all claims seeks "costs of suit as allowed by 11. law and for such other and further relief as the court deems proper," which may include an award of attorney's fees. (Complaint, prayer ¶ D.) "Attorneys' fees may be included in the amount in controversy if recoverable by statute or contract." Simmons v. PCR Technology, 209 F. Supp.2d 1029, 1034 (N.D. Cal. 2002)(quoting Galt G/S v. JSS Scandinavia, 142 F.3d 1150, 155-56 (9th Cir. 1998)). Although California Business and Professions Code §17200 does not expressly provide for attorney's fees, "if a plaintiff prevails in an unfair competition law claim, it may seek attorney's fees as a private attorney general pursuant to Code of Civil Procedure § 1021.5." Walker v. Countrywide Home Loans, Inc., 98 Cal. App. 4<sup>th</sup> 1158, 1179 (2002). Thus, attornev's fees may be included in the amount in controversy based on the claims asserted in Plaintiff's Complaint, because attorney's fees are recoverable under Code of Civil Procedure § 1021.5 for claims asserted under Business and Professions Code §17200. It is more likely than not that the amount of attorney's fees in controversy exceeds \$100,000. Attorney's fees accrue until the action is resolved for the purpose of the amount in controversy requirement. Simmons, 209 F.Supp.3d at 1034.
- 12. Therefore, the claims alleged and damages requested in Plaintiff's Complaint for lost income and other economic losses, attorney's fees, punitive damages, disgorgement of illgotten gains under Business and Professions Code section 17200, and other Special and General damages, demonstrate the matter in controversy exceeds the requirement under 28 U.S.C. §1332(a).
  - This Notice of Removal has been filed within the time frame provided by 28 13.

Document 5

Filed 08/14/2008

Page 11 of 57

Case 3:08-cv-03804-EMC

28

# Exhibit A

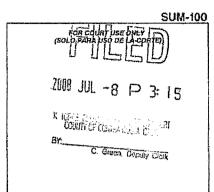
7-17-08 1050A

SUMN	RONS
(CITACION	JUDICIAL)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO): Cheme Contracting Corporation, a business entity of unknown form; and DOES

1-25, inclusive



YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Victor Gonzalez

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filling fee, ask the court clerk for a fee walver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an

attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.fawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles lagales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carte o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesar su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selihaip/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede més cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta

su respueste a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede ilamer a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Servicas, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California. (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is: (El nombre y dirección de la corte es): Wakefield Taylor Courthouse

CASE NUMBER (TV

08-01746

725 Court Street					
Martinez CA 94553 Unlimited Civil Jurisdiction The name, address, and teler (El nombre, la dirección y el ri Christopher B. Dolan (SBN The Dolan Law Firm	iúmero de tel		demandante, o del deman	ney, is: Idante que no tiene abogado, es 121-2800	s):
1438 Market Street		CLERK OF THE		C. Gresen	
San Francisco, CA 94102 DATE: (Fecha)	8 2008	SUPERIOR COURT	Clerk, by(Secretario)	and the second	, Deputy (Adjunto)
(For proof of service of this su (Para prueba de entrega de e	sta citatión u	sa al formulario Proof ol	f Service of Summons, (P	OS-010)).	
ISEALI		rO THE PERSON SER\ is an individual defenda			
THE STATE OF THE S		•	er the fictitious name of (sp	•	
	3. 🖎 (	on behalf of (specify):	Cherne Contrac	cting Corporation	ř
			ty of unknown		
	under:		rporation)	CCP 416.60 (minor)	m.5

Form Adopted for Mondatory Lice Judicial Council of Cablornia SUM-100 (Rev. January 1, 2004)

SUMMONS

≥ by personal delivery on (date): 1 - \

CCP 416.40 (association or pertnership) CCP 416.90 (authorized person) other (specify): a business entity of unknown rorm)

Code of Civil Procedure §§ 412,25, 465

Page 1 of 1

Christopher B. Dolan (SBN 165358) THE DOLAN LAW FIRM 1438 Market Street San Francisco, CA 94102 Tel: (415) 421-2800 Fax: (415) 421-2830

Attorneys for Plaintiff VICTOR GONZALEZ

1

2

3

4

5

6 7

8

9

10

11

12

13

14

15

16

17

18 19

20

21

22 23 24

25

26

27

28

-9 P 3: 14



# IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF CONTRA COSTA UNLIMITED CIVIL JURISDICTION

VICTOR GONZALEZ,

Plaintiffs,

CHERNE CONTRACTING CORPORATION, a business entity of unknown form; and DOES 1 - 25, inclusive

Defendants.

08 - 01746 =

COMPLAINT FOR DAMAGES

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; 2. WRONGFUL CONSTRUCTIVE TERMINATION 3. VIOLATION OF CALIFORNIA LABOR CODE SECTION 6400 ET SEQ.; 4. UNFAIR BUSINESS PRACTICE (VIOLATION OF BUS. & PROF. § 17200).

PER LOCAL RULE 5 THI CASE IS ASSIGNED TO

DEMAND FOR A JURY TRIAL

Comes now VICTOR GONZALEZ, Plaintiff in the above action, and files this Complaint SUMMONS SCHOOL and further alleges as follows:

## **PARTIES**

The true names and capacities of the Defendants, DOES 1 through 25, whether individual, corporate, associate or otherwise, are unknown to Plaintiff at the time of filing this Complaint and Plaintiff, therefore, sues said Defendants by such fictitious names and will ask leave of Court to amend this Complaint to show their true names or capacities when the same have been ascertained.

THE DOLAN LAW FIRM THE DOLAN BURDING 1418 MAPER TREES SAN FRANCISCO, CA TEL: (416) 421-2800 FAX: (416) 421-2830

COMPLAINT FOR DAMAGES; DEMAND FOR JURY TRIAL

6

9

14

19 20

21 22

23 24

25

26 27

28

THE DOLAN W FIRM RANCISCO, CA (415) 421-2800 (435) 421-2830

Plaintiff is informed and believes, and thereupon alleges, that each of the DOE Defendants is, in some manner, responsible for the events and happenings herein set forth and proximately caused injury and damages to the Plaintiff as herein alleged.

- Plaintiff is informed and believes, and thereupon alleges, that at all times herein mentioned, each of the Defendants was the agent, employee, servant, co-venturer, and/or employee of each of the other Defendants and was at all times herein mentioned acting within the scope of said agency, venture, and/or employment and with actual or ostensible authority and/or agency and that each of the Defendants ratified the actions and/or conduct of the others.
- 3. Plaintiff VICTOR GONZALEZ, was at all relevant times, an employee of Defendants CHERNE CONTRACTING CORPORATION and/or DOES 1-25 at all relevant times until the termination of his employment.
- Defendant CHERNE CONTRACTING CORPORATION and/or Defendants DOES 1-25, was at all times herein mentioned and is a business entity of unknown form, doing business within the County of Contra Costa, State of California, within the above captioned judicial district. Many of the acts complained of herein took place within said judicial district. Plaintiff is informed and believes. and thereupon alleges, that CHERNE CONTRACTING CORPORATION and/or DOES 1-25 (hereinafter jointly "Corporate Defendants") were the employer and/or parent company of the other defendants.
- 5. Plaintiff is informed and believes, and thereupon alleges, that at all material times. defendants DOES 1-25 were business of unknown form, and were the employers of Plaintiff and/or the individual managers, supervisors, and/or co-workers mention herein. Plaintiff will ask leave of Court to amend this Complaint to show their true names or capacities when the same have been ascertained.

## VENUE AND JURISDICTION

Venue in this court is proper as Plaintiff worked within and the injuries to the Plaintiff occurred within the County of Contra Costa. Further, the Corporate Defendants availed themselves of the subject jurisdiction by operating their business within the subject jurisdiction for the purposes of

2

3

4

5

6 7 8

9

10

11

12

13

14

15

16 17

18

19

20

21

22

23

24

25

26

27

28

extending their business to the county and/or providing services to existing clients.

- 7. Subject matter in this action is properly heard in this Court, as the action incorporates an amount in controversy as set forth in this complaint which exceeds \$25,000.00.
- At all times mentioned herein, California's Labor Code § 6400 et seq., among others, were in full force and effect, and were binding upon Defendants.

# FACTS COMMON TO ALL CAUSES OF ACTION

- 9. Plaintiff began working for Corporate Defendants in or about August 2006 on a large concrete pouring job.
- 10. Plaintiff was involved in the pouring and/or vibrating of the concrete. Plaintiff is informed and believes, and thereupon alleges, that failing to vibrate the concrete properly results in air pockets being trapped within the concrete, reducing the strength of the concrete and creating a health and safety hazard for persons, such as Plaintiff who was working on the job, as well as for the general public. Plaintiff felt this conduct violated regulations and/or local codes that governed the sale and/or construction of concrete. Plaintiff was specifically concerned about the construction adhering to the proper regulations and/or ordinances as he was informed and believed, and thereupon alleges, that the construction involved the building and/or expansion of a refinery on or near one or more faults in a highly populated region increasing the likelihood and/or risks of catastrophic consequences in the event of structural fails
- 11. Plaintiff is informed and believes, and thereupon alleges, that Corporate Defendants and/or their foremen, managers and/or supervisors failed to ensure the concreted poured at the workplace where Plaintiff worked was properly vibrated.
- 12. Plaintiff repeatedly expressed his concern to the workplace foremen, managers, and/or supervisors, including but not limited to the general foreman Billy Palacios, that the concrete poured at the site was not being properly vibrated and/or the concrete was likely to have air pockets.
- Plaintiff is informed and believes, and thereupon alleges, that as the forms used to hold the 13. concrete in place as it set were removed, air pockets were often uncovered requiring additional

THE DOLAN LAW FIRM

3

4 5

8

9

10

11 12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

concrete to be added as patches.

- 14. Plaintiff was involved in pouring the concrete for three columns.
- 15. In protest of the failure to properly vibrate the poured concrete and in fear for his safety, Plaintiff removed himself from involvement with the pouring of the concrete because of the structural defects resulting from improper construction methods used at the site.
- 6 16. Plaintiff informed Jim Coon, piping superintendent, his reasons for no longer participating 7 in the pouring of the concrete, including that the concrete was not being properly vibrated.
  - 17. Plaintiff is informed and believes, and thereupon alleges, that Jim Coon discussed Plaintiff's protest regarding the failure to properly vibrate the poured concrete with, among others, Tim Rhan, the civil superintendent at the site.
  - 18. Plaintiff informed Tim Rhan, the civil superintendent at the site, that Juan Blass should not be directly involved in pouring the concrete and/or that Juan Blass's involvement had resulted in many air pockets which created a health and safety threat.
  - 19. Plaintiff worked on an "off plot job", a sub-project at the same general workplace, pouring concrete from May 2007 through July 2007. Plaintiff is informed and believes, and thereupon alleges, that Juan Blass did not initially welcome this other assignment.
  - On or about July 18, 2007, Plaintiff learned that Juan Blass was being sent to the same "off 20. plot job" to pour concrete. Plaintiff is informed and believes, and thereupon alleges, that Tim Rhan sent Juan Blass to pour concrete at the off plot job. Plaintiff had concerns for his health and safety should Juan Blass be assigned to the same "off plot job."
  - As the same structural inadequacies were presented by the company's refusal to adhere to generally accepted principals of concrete construction, on or about July 21, 2007, Plaintiff was constructively discharged from his employment. Plaintiff is informed and believes, and thereupon alleges, that any reasonable person in plaintiff's position subject to those actions would have resigned or quit his employment, as plaintiff was compelled to do out of fear. Plaintiff is informed and believes, and thereupon alleges, that a reasonable employer would have realized that a reasonable person in Plaintiff's position would have been compelled to resign.
  - Plaintiff's employment was constructive terminated when Corporate Defendants and their

THE DOLAN LAW FIRM TEL: (415) 421-2600 FAX: (415) 421-2830

THE
DOLAN
LAW FIRM
PRI SOLUTIONS
1411 SOLUTIONS
1411 SAN FRANCISCO, CA

TEL: (415) 421-2800 FAX: (415) 421-2830 foremen, managers, and/or supervisors failed to take action and/or change the concrete pouring and/or vibrating practices at the workplace subsequent to Plaintiff's protests thereby creating an unsafe work environment, in violation of California Labor Code § 6400 et seq. among others, into which Plaintiff was unable to enter.

# FIRST CAUSE OF ACTION Wrongful Termination in Violation of Public Policy (Against Corporate Defendants)

- 23. Plaintiff re-alleges the allegations set forth in paragraphs 1-22, *supra*, and incorporates them herein by reference as though set forth here in full.
- 24. Plaintiff is informed and believes and thereon alleges that Corporate Defendants, and each of them, in taking the actions and/or failing to take action as set forth above, created the intolerable conditions at the workplace, and failed to take any steps to end those conditions for the purpose of causing plaintiff's resignation failed to retaliated against Plaintiff for her protesting unlawful discrimination and harassment. Corporate Defendants, and each of them, thereby subjected Plaintiff to wrongful constructive termination of Plaintiff's employment in violation of the public policy of the State of California, as set forth in Labor Code §6400, et seq., and/or state and local building codes, among other applicable provisions of law.
- 25. Corporate Defendants, and each of them, failed to provide a workplace satisfying the requirements of California state laws and regulations.
- 26. As a direct and proximate result of the unlawful conduct of Defendants, and each of them, Plaintiff has lost income and career opportunities, and has suffered other economic losses in an amount to be determined at time of trial. Plaintiff has sought to mitigate such wage-related damages.
- As a direct and proximate result of the unlawful conduct of Defendants, and each of them, as alleged herein, Plaintiff has suffered general damages including but not limited to humiliation, inconvenience, anxiety, emotional distress, mental suffering, and fear and other damages to be proven at the time of trial.
- 28. Defendants, and each of them, committed the acts herein alleged maliciously, fraudulently and oppressively in conscious disregard for Plaintiff's rights. Plaintiff is entitled to recover punitive

damages from Defendants in an amount according to proof.

WHEREFORE, Plaintiff prays for judgment as set forth below.

3

2

SECOND CAUSE OF ACTION Wrongful Constructive Discharge (Against Corporate Defendants)

567

29. Plaintiff re-alleges the allegations set forth in paragraphs 1-28, *supra*, and incorporates them herein by reference as though set forth here in full.

9

8

30. The conditions at Plaintiff's workplace, including the failure of Plaintiff's foremen, managers, and/or supervisors, to take action in response to Plaintiff's complaints concerning the pouring and improper vibration of concrete, were intolerable and/or aggravated at the time Plaintiff was forced to quit his employment.

11 12

13

14

31. Corporate Defendants knowingly permitted the working conditions at the workplace as described above. Corporate Defendants and/or their foremen, managers, and/or supervisors had actual knowledge of the intolerable conditions caused by the acts alleged above, and failed to take any steps to end those conditions for the purpose of causing plaintiff's resignation. Furthermore, Corporate Defendants and/or their foremen, managers, and/or supervisors knew or should have known that plaintiff's resignation would result from its actions.

15 16

17

18 19 32. In doing the acts described herein by Plaintiff in the factual summary *supra*, Corporate Defendants deprived Plaintiff of prospective career and employment opportunities, as well as other benefits, by failing to perform its duties to administer and apply all State and local laws, procedures and regulations.

202122

23 24 33. Corporate Defendants forced the constructive discharge of plaintiff in breach of public policy. The underlying public policy being those articulated in California Labor Code § 6400 et seq., which requires an employer to "furnish employment and a place of employment that is safe and healthful for the employees therein."

2526

27

34. As a direct and proximate result of the unlawful conduct of Defendants, and each of them, Plaintiff has lost income and career opportunities, and has suffered other economic losses in an amount to be determined at time of trial. Plaintiff has sought to mitigate such wage-related damages.

28 THE

DOLAN
LAW FIRM
MILLIANTE PARTITION
144 DATE PARTITION
144 DATE PARTITION
144 DATE
14

6

35.

5

6

# 10 11

12

13 14

15 16 17

18 19

20

21 22

23 24

25 26

27 28 Plaintiff has suffered general damages including but not limited to humiliation, inconvenience, anxiety, emotional distress, mental suffering, and fear and other damages to be proven at the time of trial. Defendants, and each of them, committed the acts herein alleged maliciously, fraudulently

As a direct and proximate result of the unlawful conduct of Defendants, and each of them.

36. and oppressively in conscious disregard for Plaintiff's rights. Plaintiff is entitled to recover punitive damages from Defendants in an amount according to proof.

### THIRD CAUSE OF ACTION Violation of California Labor Code Section 6400, et seq. (Against Corporate Defendants)

- Plaintiff re-alleges the allegations set forth in paragraphs 1-36, supra, and incorporates them herein by reference as though set forth here in full.
- At all times mentioned herein, California's Labor Code §6400, et seq., among others, were in full force and effect, and were binding upon Defendants.
- 39. The conditions at Plaintiff's workplace, including the failure of Plaintiff's foremen, managers, and/or supervisors, to take action in response to Plaintiff's complaints concerning the pouring and improper vibration of concrete, were intolerable and/or aggravated at the time Plaintiff was forced to quit his employment.
- Corporate Defendants knowingly permitted the unsafe workplace as described above. Corporate Defendants and/or their foremen, managers, and/or supervisors had actual knowledge of the intolerable conditions caused by the acts alleged above, and failed to take any steps to end those conditions for the purpose of causing plaintiffs resignation. Furthermore, Corporate Defendants and/or their foremen, managers, and/or supervisors knew or should have known that plaintiffs resignation would result from its actions in creating an unsafe work environment.
- 41. In doing the acts described herein, Corporate Defendants deprived Plaintiff of prospective career and employment opportunities, as well as other benefits, by failing to perform its duties to administer and apply all State and local laws, procedures and regulations to ensure, among other

2

3

4

5

6

7 8

9

10

11 12 13

14

15

16 17

18

19

20

21

22

23 24

25 26

27

28

- As a direct and proximate result of the unlawful conduct of Defendants, and each of them, 42. Plaintiff has lost income and career opportunities, and has suffered other economic losses in an amount to be determined at time of trial. Plaintiff has sought to mitigate such wage-related damages.
- As a direct and proximate result of the unlawful conduct of Defendants, and each of them, 43. Plaintiff has suffered general damages including but not limited to humiliation, inconvenience, anxiety, emotional distress, mental suffering, and fear and other damages to be proven at the time of trial.
- Defendants, and each of them, committed the acts herein alleged maliciously, fraudulently 44. and oppressively in conscious disregard for Plaintiff's rights. Plaintiff is entitled to recover punitive damages from Defendants in an amount according to proof.

OURTH CAUSE OF ACTION Unfair Business Practice Violation of California Business and Professions Code § 17200 et seq. (Against Corporate Defendants)

- Plaintiff re-alleges the allegations set forth in paragraphs 1-44, supra, and incorporates 45. them herein by reference as though set forth here in full.
- At all times mentioned herein, California's Business and Professions Code § 17200 et seq., 46. among others, were in full force and effect, were binding upon Defendants, and prohibited any unlawful, unfair or fraudulent business act or practices.
- Plaintiff is informed and believes, and thereupon alleges, that during his employment with Defendants as described above and thereafter, Defendants engaged in unfair business acts or unfair business practices as defined by Business and Professions Code § 17200, et seq. including but not limited to intentionally and improperly failing to follow proper construction techniques, including failing to sufficiently vibrate the concrete poured on site, resulting in structural deficiencies and/or an unsafe work environment.
- These challenged policies and practices have harmed Plaintiff and the general public. 48.
- Plaintiff is thus entitled to an order requiring Defendants to disgorge the ill-gotten gains 49.

DOLAN AW FIRM

THE

obtained by engaging in these unlawful business practices and to provide restitution to all persons who 1 have suffered damages or injury as a result of these unlawful business practices during the relevant 2 3 limitations period. As a direct and proximate result of the unlawful conduct of Defendants, and each of them, 4 50. Plaintiff has lost income and career opportunities, and has suffered other economic losses in an 5 amount to be determined at time of trial. Plaintiff has sought to mitigate such wage-related damages. 6 As a direct and proximate result of the unlawful conduct of Defendants, and each of them, 7 Plaintiff has suffered general damages including but not limited to humiliation, inconvenience, 8 anxiety, emotional distress, mental suffering, and fear and other damages to be proven at the time of 9 trial. 10 Defendants, and each of them, committed the acts herein alleged maliciously, fraudulently 52. 11 and oppressively in conscious disregard for Plaintiff's rights. Plaintiff is entitled to recover punitive 12 damages from Defendants in an amount according to proof. 13 14 WHEREFORE, Plaintiff, VICTOR GONZALEZ, prays for judgments against the Defendants, and 15 each of them, as follows: 16 17 18 PRAYER FOR RELIEF 19 FIRST THROUGH THIRD CAUSES OF ACTION 20 Special damages in a sum according to proof against Corporate Defendants; 21 A. General damages in a sum according to proof against Corporate Defendants; 22 B. For interest provided by law including, but not limited to, California Civil Code Section 23 C. 3291 against Corporate Defendants; 24 Costs of suit as allowed by law and for such other and further relief as the court deems 25 D. proper against Corporate Defendants; and 26 For punitive damages against Corporate Defendants. E. 27 28 COMPLAINT FOR DAMAGES; DEMAND FOR JURY TRIAL

THE
DOLAN
LAW FIRM
MA MACHINE
INI BOLAN HEADING
1035 MARKET MAIN
SAN FRANCISCO, CA
2010
TEL: (415) 421-2800
FAX: (415) 421-280

THE DOLAN LAW FIRM 144 MART 1995 CAN PRANCE CAN PARIS CAN PARIS

10

COMPLAINT FOR DAMAGES; DEMAND FOR JURY TRIAL

		CM-D10
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Sinte Burney	nber, and address):	FOR COURT USE ONLY
Christopher B. Dolan (SBN165358) The Dolan Law Firm		
1438 Market Street		
1400 Midtket Olleet		
San Francisco, CA 94102		
TELEPHONE NO: (415) 421-2800	FAX NO.:	7000 1111 1-
ATTORNEY FOR (Name): Plaintiff Victor Gonzalez		☐ 2000 JUL -8 P 3: 15 ☐
SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONT	ra Costa	
STREET ADDRESS: 725 COURT Street MAILING ADDRESS:		County of Department of the State of the Sta
CITY AND ZIP CODE Martinez CA 94553		
BRANCH NAME Unlimited Civil Jurisdiction		BY: C. Green, Deput; Clerk
CASE NAME: Gonzalez v. Cherne Contra	cting Corp.	
CIVIL CASE COVER SHEET	Complex Case Designation	C 08-01746.
X Unlimited Limited	Counter Joinder	C 08-01746.
(Amount (Amount	Flied with first appearance by defendant	Junge:
demanded demanded is exceeds \$25,000 \$25,000 or less)	(Cal. Rules of Court, rule 3.402)	DEPT:
	w must be completed (see instructions of	n page 2).
1. Check one box below for the case type that t		·
Auto Tort	Contract F	Provisionally Complex Civil Litigation
Auto (22)	Breach of contract/warranty (96)	Cal. Rules of Court, rules 3.400-3.403)
Uninsured motorist (46)	Rule 3.740 collections (09)	Antimust/Trade regulation (03)
Other PI/PD/WD (Personal Injury/Property	Other collections (09)	Construction defect (10)
Damage/Wrongful Death) Tort	Insurance coverage (18)	Mass tort (40)
Asbestos (04)	Other contract (37)	Securities litigation (28)
Product liability (24)	Real Property	Environmental/Toxic tort (30)
Medical malpractice (45)	Eminent domain/inverse (condemnation (14)	Insurance coverage claims arising from the above listed provisionally complex case
Other PI/PD/WD (23)	Wrongful eviction (33)	types (41)
Non-PI/PD/WD (Other) Tort	1	
Business tort/unfair business practice (07)	1	Inforcement of Judgment
Civil rights (08)	Unlawful Detainer	Enforcement of judgment (20)
Defemation (13)	Commercial (31)	Aiscellaneous Civil Complaint
Fraud (15)	Residential (32)	RICO (27)
Intellectual property (19)	Orugs (38)	Other complaint (not specified above) (42)
Professional negligence (25)		Miscellaneous Civil Petition
Other non-PI/PO/WD tort (35)	Asset forfelture (05)	Partnership and corporate governance (21)
Employment	Petition re: arbitration award (11)	Other petition (not specified above) (43)
X Wrongful termination (36)	Writ of mandate (02)	
Other employment (15)	Other judicial review (39)	
2. This case is is is not compl	ex under rule 3,400 of the California Hules	of Court. If the case is complex, mark the
factors requiring exceptional judicial manag a. Large number of separately repres	ented parties d, Large number o	f witnesses
b. Extensive motion practice raising of	***************************************	h related actions pending in one or more courts
issues that will be time-consuming	· · · · · · · · · · · · · · · · · · ·	, states, or countries, or in a federal court
c. Substantial amount of documentar		judgment judicial supervision
3. Remedies sought (check all that apply): a.		claratory or injunctive relief c. X punitive
4. Number of causes of action (specify): Four	s action suit.	BY FAX
	war	Warman frame CN 1945)
6. If there are any known related cases, file ar	o serve a notice of related case. From the	(238447)
Date: Christopher B. Dolan (SBN165358)	) CA-K	Ma to
CHINGODHER O. DOTAIL GOOVED (TYPE OR PRINT NAME)	ISIGN	ATURE OF PARTY OR ATTORNEY FOR PARTY)
	NOTICE	
. Plaintiff must file this cover sheet with the fi	rst paper filed in the action or proceeding	(except small claims cases or cases filed
under the Probate Code, Family Code, or W	eliare and institutions Godej. (Cai. Hules	of Court, rule 3.220.) Failure to file may result
in sanctions.  • File this cover sheet in addition to any cove	r sheet required by local court rule.	
<ul> <li>If this case is complex under rule 3.400 et s</li> </ul>	seq. of the California Rules of Court, you	nust serve a copy of this cover sheet on all
other parties to the action of proceeding.		
Unless this is a collections case under rule	3.740 or a complex case, this cover shee	t will be used for statistical purposes drifty.  Page tel 2
Form Adopted for Mandatory Usa	CIVIL CASE COVER SHEET	egal Cal Rules of Court, news 2:30, 3:220, 3:460-3:403, 1740.
Judicial Council of California CM-010 [Rev. July 1, 2027]	SOL	Col. Standards of Judicial Administration, sld 3.16 p. P.
	···C	of at annual

# INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiffs designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

### **Auto Tort**

Auto (22)—Personal Injury/Property
Damage/Wrongful Death
Uninsured Motorist (46) (if the
case involves an uninsured
motorist claim subject to
arbitration, check this item
instead of Auto)

### Other PI/PD/WD (Personal Injury/ Property Damage/Wrongful Death) Tort

Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/ Wrongful Death Product Liability (not asbestos or toxic/environmental) (24) Medical Malpractice (45) Medical Malpractice-Physicians & Surgeons Other Professional Health Care Malpractice Other PI/PD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of **Emotional Distress** Negligent Infliction of Emotional Distress

# Other PI/PD/WD Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business
Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Detamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice
(not medical or legal)
Other Non-PI/PD/WD Tort (35)

Wrongful Termination (36)

Other Employment (15)

### Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer
or wrongful eviction)
Contract/Warranty Breach—Seller
Plaintiff (not traud or negligence)
Negligent Breach of Contract/
Warranty
Other Breach of Contract/Warranty

Other Breach of Contract/Warrant Collections (e.g., money owed, open book accounts) (09)

Collection Case—Seller Plaintiff Other Promissory Note/Collections Case

Insurance Coverage (not provisionally complex) (18)

complex/ (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

# Real Property Eminent Domain/Inverse

Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title

Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

### Unlawful Detainer

Commercial (31) Residential (32)

Orugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

# Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)

Writ-Administrative Mandamus Writ-Mandamus on Limited Court Case Matter

Writ-Other Limited Court Case Review

Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal–Labor
Commissioner Appeals

# Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims
(arising from provisionally complex case type listed above) (41)

### **Enforcement of Judgment**

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award
(not unpaid taxes)
Petition/Certification of Entry of
Judgment on Unpaid Taxes
Other Enforcement of Judgment
Case

# Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Dectaratory Relief Only Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint

Case (non-tort/non-complex)
Other Civil Complaint
(non-tort/non-complex)

### Miscellaneous Civil Petition

ellaneous Civil Petition

Partnership and Corporate
Governance (21)

Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult
Abuse
Election Contest
Petition for Name Change
Petition for Helief from Late

Claim Other Civil Petition

Employment

# SUPERIOR COURT - MARTINEZ COUNTY OF CONTRA COSTA MARTINEZ, CA, 94553

### GONZALEZ VS CHERNE CONTRACTING

NOTICE OF CASE MANAGEMENT CONFERENCE

CIVMSC08-01746

1. NOTICE: THE CASE MANAGEMENT CONFERENCE HAS BEEN SCHEDULED FOR:

DATE: 12/01/08

DEPT: 16

TIME: 8:30

THIS FORM, A COPY OF THE NOTICE TO PLAINTIFFS, THE ADR INFORMATION SHEET, A BLANK CASE MANAGEMENT CONFERENCE QUESTIONNAIRE, AND A BLANK STIPULATION FORM ARE TO BE SERVED ON OPPOSING PARTIES. ALL PARTIES SERVED WITH SUMMONS AND COMPLAINT/CROSS-COMPLAINT OR THEIR ATTORNEY OF RECORD MUST APPEAR.

- 2. You may stipulate to an earlier Case Management Conference. all parties agree to an early Case Management Conference, please contact the Court Clerk's Office at (925)957-5794 for Unlimited Civil cases and (925)957-5791 for Limited Civil cases for assignment of an earlier date.
- You must be familiar with the case and be fully prepared to participate effectively in the Case Management Conference and to discuss the suitability of this case for the EASE Program, private mediation, binding or non-binding arbitration, and/or use of a Special Master.
- At any Case Management Conference the court may make pretrial orders including the following:
  - an order establishing a discovery schedule
  - an order referring the case to arbitration

  - an order transferring the case to limited jurisdiction an order dismissing fictitious defendants an order scheduling exchange of expert witness information
  - an order setting subsequent conference and the trial date
  - an order consolidating cases
  - an order severing trial of cross-complaints or bifurcating
  - an order determining when demurrers and motions will be filed

### SANCTIONS

If you do not file the Case Management Cónference Questionnaire or attend the Case Management Conference or participate effectively in the Conference, the court may impose sanctions (including dismissal of the case and payment of money).

Clerk of the Superior Court of Contra Costa County I declare under penalty of perjury that I am not a party to this action, and that I delivered or mailed a copy of this notice to the person representing the plaintiff/cross-complainant.

Dated: 07/08/08 CATHRYN GREEN, Deputy Clerk

# Superior Court of California, County of Contra Costa

# NOTICE TO PLAINTIFFS

In Unlimited Jurisdiction Civil Actions

# AFTER YOU FILE YOUR COURT CASE:

- 1. Have the forms the clerk gives you served on all defendants in this case:
  - a. The Complaint
  - b. The Summons
  - c. The Notice of Case Management Conference (shows hearing date and time)
  - d. The Notice to Defendants (Local Court Form CV-655d)
  - e. Blank: Case Management Statement (Judicial Council Form CM-110)
  - f. <u>Blank</u>: Stipulation and Order to Attend ADR and Delay First Case Management Conference 90 Days (Local Court Form CV-655b)
  - g. Alternative Dispute Resolution (ADR) Information (Local Court Form CV-655c)
- 2. Within 60 days of the date you filed the complaint you must prove that the forms have been served on (delivered to) the defendants correctly by filing the <u>Proof of Service</u> form (POS-010) (completed by the person who did the service) with the court.
- 3. Go to the case management conference on the date indicated on <u>The Notice of Case</u> Management Conference.
- 4. Consider using mediation, arbitration, or neutral case evaluation (ADR) to resolve the dispute. All parties must answer questions about ADR on the Case Management Statement form. For more information, see the enclosed ADR information, visit <u>www.cc-courts.org/adr</u>, or call (925) 957-5787.
- 5. You may delay the first case management conference while you try to resolve the dispute in ADR. If all parties agree to use ADR, complete and file the <u>Stipulation and Order to Attend ADR and Continue First Case Management Conference 90 Days</u> form to tell the court you want to use this option.

All civil actions (except juvenile, probate, family, unlawful detainer, extraordinary writ, and asset forfeiture') and personal injury cases where a party is claiming damages² must meet the Civil Trial Delay Reduction time limits for filing documents and moving their cases forward. These time limits are listed in California Rule of Court 3.110 and Local Court Rule 5. If parties miss these deadlines, a judge might issue an order (Order to Show Cause) for them to explain in court why they should not have to pay a fine or have their case dismissed.

VIEW LOCAL COURT RULES AT: (WWW.CC-COURTS.ORG/RULES)

<sup>1</sup> Health and Safety Code §11470 et seq.

<sup>&</sup>lt;sup>1</sup> Including claims for emotional distress and/or wrongful death.

# Superior Court of California, County of Contra Costa

# NOTICE TO DEFENDANTS

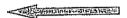
In Unlimited Jurisdiction Civil Actions

# YOU ARE BEING SUED. The packet you have been served should contain:

- The Summons
- The Complaint b.
- The Notice of Case Management (shows hearing date and time) O.
- Blank: Case Management Statement (Judicial Council Form CM-110) đ.
- Blank: Stipulation and Order to Attend ADR and Delay First Case Management Conference е. 90 Days (Local Court Form CV-655b)
- Alternative Dispute Resolution (ADR) Information (Local Court Form CV-655c) f.



# WHAT DO I DO NOW?



# You must:

- 1. Prepare your response YOU COULD LOSE YOUR CASE—even before it is heard by a judge or before you can defend yourself, if you do not prepare and file a response on time. See the other side of this page for types of responses you can prepare.
- 2. Complete the Case Management Statement (CM-110)
- Once your court forms are complete, you 3. File and serve your court papers on time must file 1 original and 2 copies of the forms at court. An adult who is NOT involved in your case must serve one set of forms on the Plaintiff. If you were served in person you must file your response in 30 days. If the server left a copy of the papers with an adult living at your home or an adult in charge at your work or you received a copy by mall you must file your response in 40 days.
- by having your server complete a Proof 4. Prove you served your court papers on time of Service, (Judicial Council form POS-040), that must be filed at the court within 60 days.
- 5. Go to court on the date and time given in the Notice of Case Management Conference.
- If you and the other party to the case 6. Consider trying to settle your case before trial can agree to use mediation, arbitration or neutral case evaluation, the Stipulation and Order to Attend ADR and Delay First Case Management Conference 90 Days can be filed with your other papers. For more information read the enclosed ADR information, visit www.cc-courts.org/adr, or call (925) 957-5787.

IMPORTANTI The court recommends consulting an attorney for all or part of your case. While you may represent yourself, lawsuits can be complicated, and the court cannot give you legal advice.

COURT FEES: You must pay court fees the first time you file your papers. If you also file a motion, you must pay another fee. If you cannot afford the fees, you may ask the court to waive (allow you not to pay) fees. Use Judicial Council forms FW-001-INFO [information sheef]; FW-001 [application]; and FW-003 [order].

COURT FORMS: Buy forms at the Forms Window in the Family Law Building or download them for free at: www.courtinfo.ca.gov/forms/

Richmond: (510) 374-3019

# WHAT KIND OF RESPONSES CAN I FILÉ?

- 1. If you disagree with some or all of what the plaintiff says in the complaint because you believe, or know it is not true, you can file an ANSWER.
- 2. If you have a claim in the same case against the plaintiff, you may file a CROSS-COMPLAINT.
- 3. If you want to ask the court to do something on your behalf, you may file a MOTION (See TYPES OF MOTIONS below)

# HOW DO I PREPARE AN ANSWER?

There are two kinds of Answers you can use, depending on whether the Complaint was verified. You can tell if a Complaint is verified because it says "Verified Complaint" and/or has a signed oath on the last page.

# For complaints that are NOT verified:

Use Judicial Council form PLD-050 - General Denial

# For complaints that ARE verified:

- a. For personal Injury, property damage, and wrongful death claims, use Judicial Council PLD-PI-003 (do not check number 2).
- b. For contract claims, use Judicial Council PLD-C-010 (do not check number 3a).
- c. Be sure to deny every claim with which you disagree. For example, you might write: "I believe, or know, that the information in paragraph #\_ is untrue/incorrect." Continue your list until you have addressed each paragraph in the Complaint.

NOTE: The Judicial Council Answer forms have spaces for your affirmative defenses. Be sure to include them or you may not be able to use them later. To find out what your affirmative defenses might be, go to the law library and ask the librarian to help you find the information you need.

If you want to file a Cross-Complaint, you must do so at the same time you file the Answer.

- For a personal injury, property damage, and/or wrongful death Cross-Complaint, use Judicial Council form
- For a contract Cross-Complaint, use Judicial Council PLD-C-001.

# TYPES OF MOTIONS

Written motions are documents that ask the court to do something. You may have to file an Answer at the same time. At this point in the case, you can only make Motions from the following list:

- 1. Demurrer (the facts stated in the complaint are wrong, or the deadline to file the lawsuit has passed):
- 2. Motion to Strike (the complaint is unclear; does not follow the law, "doesn't matter", etc.);
- 3. Motion to Transfer (the complaint is in the wrong court or there's a more appropriate court):
- 4. Motion to Quash Service of Summons (you were not legally served):
- 5. Motion to Stay (put the case on hold); or
- 6. Motion to Dismiss (stops the case).

NOTE: Motions are very complicated and you may want to hire a lawyer to help you.

## WHERE CAN I GET MORE HELP?

- Lawyer Referral Service: (925) 825-5700
- Bay Area Legal Ald: (800) 551-5554
- Martinez: (925) 646-2783 Contra Costa County Law Library
- Ask the Law Librarian: www.247ref.org/portal/access\_law3.cfm

	CN-110
ATTORNEY OR PARTY WITHOUT ATTORNEY (Warne, State Bar notaber, and address):	FOR COURT USE DILLY
ion	
•	•
TELEPHONE NO: FAX NO. (Optional):	
E-MAIL ADDRESS (Options):	
ATTORNEY FOR (Name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
STREET ADDRESS:	
MAILING ADDRESS:	
CITY AND ZIP CODE:	
BRANCH NAME	
	Mary I
PLAINTIFF/PETITIONER:	
DEFENDANTIRESPONDENT:	
CASE MANAGEMENT STATEMENT	0.00
· .	CASE NUMBER:
(Check one): UNLIMITED CASE LIMITED CASE (Amount demanded (Amount demanded is \$25,000)	
exceeds \$25,000) or less)	
A CASE MANAGEMENT CONFERENCE is scheduled as follows:	
	Div.: Room:
Date: Time: Dept.:	Div
Address of court (if different from the address above);	
INSTRUCTIONS: All applicable boxes must be checked, and the specifie	ed information must be provided.
<ol> <li>Party or parties (answer one):         <ul> <li>This statement is submitted by party (name):</li> <li>This statement is submitted Jointly by parties (names):</li> </ul> </li> <li>Complaint and cross-complaint (to be answered by plaintiffs and cross-complainal a. The complaint was filed on (date):         <ul> <li>Tha cross-complaint, if any, was filed on (date):</li> </ul> </li> </ol>	nts only)
3. Service (to be answered by plaintiffs and cross-complainants only)	
a. All parties named in the complaint and cross-complaint have been served	I, or have appeared, or have been dismissed.
b. The following parties named in the complaint or cross-complaint	
(1) . heve not been served (specify names and explain why not):	•
13) the state and a partial change the auto orbitis said unit	4
(2) have been served but have not appeared and have not been	n dismissed (specify names);
(3) have had a default entered against them (specify names):	
c. The following additional parties may be added (specify names, nature of they may be served):	involvement in case, and the date by which
4. Description of case a. Type of case in complaint cross-complaint (describe,	including causes of action);
Form Adopted for Mandalory Uses	Page 1 of Cal, Ruses of Cou
Judical Council of California CASE MANAGEMENT STATEMENT CM-110 [Rev. January 1, 2007]	Ries 3.70-3.7 www.coullbose.g

PLAINTIFF/PETITIONER:	CASE NUMBER:
EFENDANT/RESPONDENT:	<u>.</u>
b. Provide a brief statement of the case, including any damages. (If personal injury data damages claimed, including medical expenses to date [indicate source and amount] earnings to date, and estimated future lost earnings. If equitable relief is sought, deata.	1. estimated future medical expenses, lost
(If more space is needed, check this box and attach a page designated as Attach	hment 4b.)
Jury or nonjury trial  The party or parties request a jury trial a nonjury trial (if more then requesting a jury trial):	one party, provide the name of each party
Trial date  a. The trial has been set for (date):  b. No trial date has been set. This case will be ready for trial within 12 months ont, explain):	of the date of the filing of the complaint (if
c. Dates on which parties or attorneys will not be available for trial (specify dates and	l explain reesons for unavailability):
Estimated length of trial  The party or parties estimate that the trial will take (check one):  a days (specify number):  b hours (short causes) (specify):	• •
Trial representation (to be answered for each party) The party or parties will be represented at trial by the attorney or party listed in a. Attorney: b. Firm: c. Address: d. Telephone number:	n the caption by the following:
e. Fax number:  f. E-mail address:  g. Party represented:  Additional representation is described in Attachment 8.	
9. Preference This case is entitled to preference (specify code section):	•
10. Alternative Dispute Resolution (ADR)  a. Counsel  has  has not provided the ADR information package is reviewed ADR options with the client.  b. All parties have agreed to a form of ADR. ADR will be completed by (date):	identified in rule 3.221 to the client and ha
c. The case has gone to an ADR process (indicate status):	

	CM-110
PLAINTIFF/PETITIONER:	CASE HUMBER:
DEFENDANTIRESPONDENT:	
10. d. The party or parties are willing to participate in (check all that apply):  (1) Mediation (2) Nonbinding judicial arbitration under Code of Civil Procedure section 1 arbitration under Cal. Rules of Court, rule 3.822)  (3) Nonbinding judicial arbitration under Code of Civil Procedure section 1 before trial; order required under Cal. Rules of Court, rule 3.822)  (4) Binding judicial arbitration (5) Binding private arbitration (6) Neutral case evaluation (7) Other (specify):	
e. This matter is subject to mandatory judicial arbitration because the amount f. Plaintiff elects to refer this case to judicial arbitration and agrees to limit reconnected procedure section 1141.11.  g. This case is exempt from judicial arbitration under rule 3.811 of the California.	overy to the amount specified in Code of Civil
11. Settlement conference  The party or parties are willing to participate in an early settlement conference (	specify when):
<ul> <li>12. Insurance</li> <li>a. Insurance carrier, if any, for party filling this statement (name):</li> <li>b. Reservation of rights: Yes No</li> <li>c. Coverage Issues will significantly effect resolution of this case (explain):</li> </ul>	
13. Jurisdiction Indicate any metters that may affect the court's jurisdiction or processing of this case, Bankruptcy Other (specify): Status:	and describe the status.
14. Related cases, consolidation, and coordination  a. There are companion, underlying, or related cases.  (1) Name of case: (2) Name of court: (3) Case number: (4) Status:  Additional cases are described in Attachment 14a.  b. A motion to consolidate coordinate will be filed by	y (namə party):
15. Bifurcation  The party or parties intend to file a motion for an order bifurcating, severing, or action (specify moving party, type of motion, and reasons):	coordinating the following Issues or causes of
16. Other motions  The party or parties expect to file the following motions before trial (specify motions).	ving party, type of motion, and issues);
CM-110 Rev. Junuary 1, 2007)	Page 3 of 4

	CM-110
PLAINTIFF/PETITIONER:	CASE NUMBER:
FENDANT/RESPONDENT:	
Discovery a The party or parties have completed all discovery. b The following discovery will be completed by the date specified (describe a	all anticipated discovery):
<u>Party</u> <u>Description</u>	<u>Date</u>
•	•
c. The following discovery issues are anticipated (specify):	· ·
3. Economic Litigation  a. This is a limited civil case (i.e., the amount demanded is \$25,000 or less) of Civil Procedure sections 90 through 98 will apply to this case.  b. This is a limited civil case and a motion to withdraw the case from the ecodiscovery will be filed (if checked, explain specifically why economic litigates should not apply to this case):	nnomic litigation procedures or for additional
Other issues The party or parties request that the following additional matters be consider conference (specify):  Other issues	ed or determined at the case management
O. Meet and confer  a. The party or parties have met and conferred with all parties on all subject of Court (if not, explain):  Of Court (if not, explain):	ds required by rule 3.724 of the California Rules
<ul> <li>After meeting and conferring as required by rule 3.724 of the California Rules (specify):</li> </ul>	of Court, the parties agree on the following
21. Case management orders  Previous case management orders in this case are (check one):	attached as Attachment 21.
22. Total number of pages attached (if any):	
I am completely familiar with this case and will be fully prepared to discuss the status raised by this statement, and will possess the authority to enter into stipulations on the conference, including the written authority of the party where required.	of discovery and ADR, as well as other Issues ese issues at the time of the case management
Date:	
(TYPE OR PRINT NAME)	(SIGNATURE OF PARTY OR ATTORNEY)
<b>)</b>	

# SUPERIA .. COURT OF THE STATE OF CAL DRNIA IN AND FOR THE COUNTY OF CONTRA COSTA

errent en	<u> </u>						
and the state of t	vs.	Pla	Intiff(s)				
		Dafen	dant(s)	<u>Stipulati</u> First Cas	on and e	<u>Order</u> to Atte gement Conf	nd ADR and Dela ference 90 Days
se No.:	Date co	mplaint file	ed:	First	case manaj	gement conference	e set for:
ALL PARTIES MU AT LEAST 15 DAY	ST SIGN THIS	FORM AN	ND FILE TO	HIS STIPULATI NAGEMENT C	ON, WITH	CASE MANAGEM	ENT STATEMENTS,
PARTIES MUST A FAX: (925) 957-56	LSO SEND A	COPY OF	THE FOR	M WITH THE J	UDGE'S S		HE ADR OFFICE:
THIS STIPULATIO							
Counsel and all parts (12(b), and have s	arties certify selected the l	they hav	e met an alternat	d conferred ( ive dispute re	on the sul esolution	bjects set forth (ADR) process:	In Rule of Court : [check ⊠one]:
Judicial medi Private medi		<b>a</b>		l arbitration arbitration		☐ Neutral o	case evaluation
<ol> <li>All parties have</li> <li>All parties have</li> <li>Defendant(s)'</li> </ol>	e been served e agreed to a first appearan Stipulation an	I and Inte specific p ce fee ha d self-ade	nd to sub Dian for su Is been p	mit to the juris afficient discovaid or will be s	sdiction of very to ma submitted	ke the ADR proc with this Stipulati	ess meaningful;
6. Case Manage	ment Confere	nce State onferenc	es as req	uired by local	court rule	(Appendix C); at	nd,
Counsel for Plaintiff (		1	Fax			ndant (print)	Fax
Signature		······································		Sign	ature	and the second s	A COLUMN TO THE
Counsel for Plaintiff (	orini)		Fax	Cou	nsel for Defe	ndant (print)	Fax
Signature		<del></del>		. Sign	ature		<u> </u>
Pursuant to the Stip the Case Managen (8:30 a.m. /	oulation of the p nent Conferenc ) Plain	parties, and e set for _ tifPs coun	d subject t sel must	o the Case Man is vac notify all partic	egement Coaled and resident of the co	order to be filed, IT escheduled for ase management	IS SO ORDERED that at conference.
Dated:				************		idge of the Super	rior Court
				WA 44 (	Ju	iañe oi nie anbei	MI COUIL



# CONTRA COSTA COUNTY SUPERIOR COURT ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

All judges in the Civil Trial Delay Reduction Program agree that parties should consider using Alternative Dispute Resolution (ADR) to settle their cases. To tell the court you will use ADR:

- Choose ADR on the Case Management Form (CM-110);
- File a Stipulation and Order to Attend ADR and Continue First Case Management Conference 90-Days (local court form); or
- Agree to ADR at your first court appearance.

Questions? Call (925) 957-5787, or go to www.cc-courts.org/adr

## **MEDIATION**

Mediation is often faster and less expensive than going to trial. Mediators help people who have a dispute talk about ways they can settle their case. Parties call or visit the ADR Programs office to get a list of mediators. After parties have agreed on a mediator, they must write a summary (5 pages or less) explaining the facts, legal arguments, and legal authority for their position. They must send this summary to the other parties and the mediator at least 5 court days before mediation starts.

ALL parties and attorneys must go to mediation. Mediation can be held whenever and wherever the parties and the mediator want, as long as they finish before the court deadline. In some kinds of court cases, parties have the chance to mediate in the courthouse on their trial day.

Most mediators begin by talking with the parties together, helping them focus on the important issues. The mediator may also meet with each party alone. Mediators often ask parties for their ideas about how to settle the case. Some mediators tell the parties how much money they think a case is worth, or tell them what they think might happen if the case went to trial. Other mediators help the parties decide these things for themselves. No matter what approach a mediator takes, decisions about settling a case can only be made when all the parties agree.

If the parties go through the court ADR program, mediators do not charge fees for the first half hour spent scheduling or preparing for mediation. They also do not charge fees for the first two hours of mediation. If parties need more time, they must pay that person's regular fees. Some mediators ask for a deposit before mediation starts. Mediators who do this must give back whatever is left after counting the time he or she spent preparing for or doing the mediation. A party whose court fees have been waived (cancelled) may ask if their mediation fees or deposit can be waived.

If parties agree about how they will settle their case, they can choose to keep it private, write it up as a contract, or ask the judge to make it a court order. What parties say and agree to in mediation is confidential (private).

# PRIVATE MEDIATION

Private mediation works in the same way as judicial mediation, but the parties do not go through the ADR Programs office. Parties choose a mediator on their own, and pay the mediator's normal fees.

# JUDICIAL ARBITRATION (non-binding)

In Judicial arbitration, an independent attorney (arbitrator) looks at the evidence, listens to the parties and their witnesses, and decides how the case will be settled. Judicial arbitration is less formal than court. Parties call or visit the ADR Programs office to get a list of arbitrators. If they cannot agree on an arbitrator, the court will assign one. The judge can send cases to arbitration if there is less than \$50,000 in dispute. The person who started the court case can make sure the case goes to arbitration if they agree to limit the amount they are asking for to \$50,000. Parties can also agree they want to use judicial arbitration. The arbitrator must send their decision (award) to the court within 10 days of the last hearing. The award becomes a court judgment unless a party asks the court to review the case within 30 days. Parties must use the ADR 102 form to ask for a new court hearing (called a trial de novo.) Judicial arbitrators charge \$150 per case or per day.

Document 5

# PRIVATE ARBITRATION (non-binding and binding)

Private, non-binding arbitration is the same as judicial arbitration, except that the parties do not go through the ADR Programs office to choose an arbitrator, and the arbitrator's award will not become a judgment of the court unless all parties agree. Parties must pay the arbitrator's normal fees.

Binding arbitration is different from judicial or private non-binding arbitration because the arbitrator's decision is final. Parties give up their right to have a judge review their case later (except for reasons listed in California Code of Civil Procedure, Section 1286.2.) Binding arbitration rules are listed in California Code of Civil Procedure, Sections 1280-1288.8. Parties may also agree any time before the judge has made a decision that ends the case to switch to binding arbitration. Parties choose the arbitrator on their own, and must pay the arbitrator's normal (not \$150) fees.

# SETTLEMENT MENTOR CONFERENCE

Settlement mentors are Independent, experienced trial attorneys that a judge has assigned to help parties look for ways to settle their case. The conference is free and is held in the courthouse. It is often held on the morning of trial, but it can be scheduled anytime. These conferences usually last two or three hours. Parties do not present evidence and do not call witnesses. Parties can ask the settlement mentor to keep some information confidential (private) from the other party, but not from the judge. The settlement mentor can share any information with the judge, or involve the judge in settlement discussions. All principals, clients, and claims representatives must attend the settlement mentor conference.

# **NEUTRAL CASE EVALUATION**

In neutral case evaluation, an independent attorney (evaluator) reviews documents and listens to each party's side of the case. The evaluator then tells the parties what they think could happen if the case went to trial. Many people use the evaluator's opinion to reach an agreement on their own, or use this information later in mediation or arbitration to settle their case.

Parties call or visit the ADR Programs office to get a list of evaluators. After parties have agreed on an evaluator, they must write a summary (5 pages or less) explaining the facts, legal arguments, and legal authority for their position. They must send this summary to the other parties and the evaluator at least 5 court days before evaluation starts. ALL parties and their attorneys must go to neutral case evaluation. The evaluation can be held whenever and wherever the parties and the evaluator want, as long as they finish before the court deadline. If the parties go through the court's ADR program, evaluators do not charge any fees for the first half hour spent scheduling or preparing for the evaluation conference. They also do not charge fees for the first two hours of the evaluation. If parties need more time, they must pay that person's regular fees. Some evaluators ask for a deposit before evaluation starts. Evaluators who do this must give back whatever is left after counting the time he or she spent preparing for or doing the evaluation. A party whose court fees have been walved (cancelled) may ask if their evaluation fees or deposit can be walved.

#### **TEMPORARY JUDGE**

Some parties want a trial, but want to choose who will decide the case and when the trial will take place. Parties can agree on an attorney that they want the court to appoint as a temporary judge for their case. (See Article 6, Section 21 of the State Constitution and Rule 2.830 of the California Rules of Court.) Temporary judges have nearly the same authority as a superior court judge to conduct a trial and make decisions. As long as the parties meet the court deadline, they can schedule the trial at their own and the temporary judge's convenience.

Each of the temporary judges on the court's panel has agreed to serve at no charge for up to 5 court days. If the parties need more time, they must pay that person's regular fees. All parties and their lawyers must attend the trial, and provide a copy of all briefs or other court documents to the temporary judge at least two weeks before the trial. These trials are similar to other civil trials, but are usually held outside the court. The temporary judge's decision can be appealed to the superior court. There is no option for a jury trial. The parties must provide their own court reporter.

#### SPECIAL MASTER

A special master is a private lawyer, retired judge, or other expert appointed by the court to help make day-to-day decisions in a court case. The special master's role can vary, but often includes making decisions that help the discovery (information exchange) process go more smoothly. He or she can make decisions about the facts in the case. Special masters can be especially helpful in complex cases. The trial judge defines what the special master can and cannot do in a court order.

Special masters often issue both interim recommendations and a final report to the parties and the court. If a party objects to what the special master decides or reports to the court, that party can ask the judge to review the matter. In general, the parties choose (by stipulation) whom they want the court to appoint as the special master, but there are times (see California Code of Civil Procedure Section 639), when the court may appoint a special master or referee without the parties' agreement. The parties are responsible to pay the special master's regular fees.

#### COMMUNITY MEDIATION SERVICES

Mediation Services are available through non-profit community organizations. These low-cost services are provided by trained volunteer mediators. For more information about these programs contact the ADR Program at (925) 957-5787

**CT** CORPORATION

A Wolferskluwer Company

Service of Process **Transmittal** 

07/18/2008

CT Log Number 513650379

TO:

Dominique Najjar

Cherne Contracting Corporation

9855 W. 78th St. Eden Prairie, MN 55344-

RE:

**Process Served in California** 

FOR:

Cherne Contracting Corporation (Domestic State: MI)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:

Victor Gonzalez, Pltf. vs. Cherne Contracting Corporation, etc., et al., Dfts.

DOCUMENT(S) SERVED:

Summons, Cover Sheet, Complaint, Notice of Case Management Conference, Notice,

Attachment(s), Stipulation Order

COURT/AGENCY:

Martinez, Superior Court, CA

Case # C0801746

NATURE OF ACTION:

Employee Litigation - Wrongful Termination - Failure to fix the intolerable conditions at workplace and failed to take any steps to end those conditions for the purpose of

causing plaintiffs resignation

ON WHOM PROCESS WAS SERVED:

C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE:

By Process Server on 07/17/2008 at 10:50

APPEARANCE OR ANSWER DUE:

Within 30 days after service - file written response # 12-1-08 at 8:30 a.m. - Case

Management Conference

ATTORNEY(S) / SENDER(S):

Christopher B. Dolan The Dolan Law Firm 1438 Market Street San Francisco, CA 94102

415-421-2800

ACTION ITEMS:

SOP Papers with Transmittal, via Fed Ex Standard Overnight, 790547102564

SIGNED: PER: ADDRESS: C T Corporation System Nancy Flores 818 West Seventh Street

Los Angeles, CA 90017 213-337-4615

TELEPHONE:

RECEIVED CHERNE-MPLS

Page 1 of 1/JD

Information displayed on this transmittel is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date. or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents,

# Exhibit B

Case 3:08-cv-03804-EMC Filed 08/14/2008 Document 5 Page 40 of 57 KATHLEEN MAYLIN (State Bar No. 155371) 1 DEVERIE J. CHRISTENSEN (State Bar No. 243829) JOHN A. ONTIVEROS (State Bar No. 225706) 2 JACKSON LEWIS LLP 199 Fremont Street, 10th Floor 3 2008 AUG -7 P 2: 41 San Francisco, California 94105 Telephone: (415) 394-9400 4 K. TORRE CLEAK OF THE SEPERCH COUNTY OF COURSE COSTA, CAL Facsimile: (415) 394-9401 5 Attorneys for Defendant C. Green, Deputy Clerk CHERNE CONTRACTING CORPORATION 6 7 8 SUPERIOR COURT OF CALIFORNIA 9 COUNTY OF CONTRA COSTA 10 11 12 VICTOR GONZALEZ, Case No. C 08-01746 13 Plaintiff. **DEFENDANT CHERNE** CONTRACTING CORPORATION'S 14 v. ANSWER TO PLAINTIFF'S UNVERIFIED COMPLAINT 15 CHERNE CONTRACTING CORPORATION, a business entity of unknown form; and DOES 16 1 TO 25, INCLUSIVE. Complaint filed: 07/08/08 Trial Date: Not set 17 Defendants. 18 BY FAX 19 Defendant CHERNE CONTRACTING CORPORATION ("Defendant") hereby answers 20 Plaintiff VICTOR GONZALEZ ("Plaintiff") unverified Complaint for Damages ("Complaint") 21 22 as follows: 23 GENERAL DENIAL 24 Pursuant to Code of Civil Procedure section 431.30(d), Defendant generally denies each and every allegation contained in Plaintiff's Complaint. Defendant further denies that Plaintiff incurred any injury or damages whatsoever as a result of Defendant's alleged conduct. DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT FOR DAMAGES Case No. C 08-01746

25

26

27

Case 3:08-cv-03804-EMC Document 5 Filed 08/14/2008 Page 41 of 57								
<u>AFFIRMATIVE DEFENSES</u>								
By way of affirmative defense to the allegations of the Complaint herein, Defendant								
alleges as follows:								
<u>FIRST AFFIRMATIVE DEFENSE</u>								
Plaintiff's Complaint as a whole, and each purported cause of action alleged therein,								
fails to state facts sufficient to constitute a cause of action against Defendant upon which relief								
may be granted.								
SECOND AFFIRMATIVE DEFENSE								
Plaintiff's Complaint, and each purported cause of action alleged therein, is barred								
because his employment with Defendant was for no specified term and terminable at will.								
<u>THIRD AFFIRMATIVE DEFENSE</u>								
Plaintiff's Complaint, and each purported cause of action alleged therein, is barred in								
whole or in part by the applicable statutes of limitations including California Code of Civil								
Procedure sections 335.1 and 340, and/or Business and Professons Code section 17208.								
FOURTH AFFIRMATIVE DEFENSE								
Plaintiff's causes of action are barred in that Defendant's actions were a just and proper								
exercise of management discretion, undertaken for a fair and honest reason regulated by good								
faith under the circumstances then existing, and based on legitimate business reasons.								
<u>FIFTH AFFIRMATIVE DEFENSE</u>								
Plaintiff's First and Second Cause of Action for wrongful termination in violation of								

Plaintiff's First and Second Cause of Action for wrongful termination in violation of public policy and wrongful constructive termination, respectively, are barred and/or any recovery is precluded because Plainitiff did not complain to Defendant that it engaged in conduct which was arguably in violation of any fundamental public policy embodied in law during his employment with Defendant.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

#### SIXTH AFFIRMATIVE DEFENSE

Plaintiff's Fourth Cause of Action under Business and Professions Code section 17200 et seq. is barred in that the alleged practices are not unfair, the public is not likely to be deceived by any alleged practices, the Defendant did not gain any competitive advantage by such practices, and the benefits outweigh any harm or other impact they may cause.

#### SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each purported cause of action therein, is barred by the doctrine of laches.

#### EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each purported cause of action therein, is barred by the doctrine of waiver.

#### NINTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint is barred in whole or in part by the defense of unclean hands.

#### TENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and on each purported cause of action alleged therein, is barred by Labor Code sections 2854 or 2856 in that Plaintiff failed to use ordinary care and diligence in the performance of his duties and failed to comply substantially with the reasonable directions of his employer.

#### ELEVENTH AFFIRMATIVE DEFENSE

Defendant is relieved of any liability whatsoever as to Plaintiff's claims against it because any unlawful conduct giving rise to the claims alleged in the Complaint committed by Defendant's alleged current or former employees or agents occurred outside the course and scope of such employment or agency.

#### TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, occurred as a direct or proximate result of his own failure to

Document 5

Case 3:08-cv-03804-EMC

Filed 08/14/2008

Page 43 of 57

·	Case 3:08-cv-03804-EMC Document 5 Filed 08/14/2008 Page 44 of 57
_	4. For such other and further relief as the court may deem just and proper.
1	
2	Dated: August 7, 2008 JACKSON LEWIS LLP
3	(D) statilistic
4	By: Kathleen Maylin
5	Kathleen Maylin  Deverie J. Christensen  John A. Ontiveros
6	Attorneys for Defendant CHERNE CONTRACTING CORPORATION
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22 23	
23	
25 26	
27	
28	
20	5 5 DEFEND ANGLED TO DI ADITIETE COMPLAINT FOR DAMAGES

Case 3:08-cv-03804-EMC Document 5 Filed 08/14/2008 Page 45 of 57 PROOF OF SERVICE 1 I, Linda A. Moore, declare that I am employed with the law firm of Jackson Lewis LLP, 2 whose address is 199 Fremont Street, 10th Floor, San Francisco, California 94105; I am over the 3 age of eighteen (18) years and am not a party to this action. 4 On August 7, 2008, I served the attached: **DEFENDANT CHERNE CONTRACTING** 5 CORPORATION'S ANSWER TO PLAINTIFF'S UNVERIFIED COMPLAINT in this 6 action by placing a true and correct copy thereof, enclosed in sealed a envelope addressed as 7 follows: 8 9 Christopher B. Dolan Attorney for Plainitff: The Dolan Law Firm Victor Gonzalez 10 1438 Market Street San Francisco, CA 94102 Tel.: 415-421-2800 11 Fax: 415-421-2830 Email: cbd@law.com 12 13 [X] BY MAIL: with the United States Postal Service by placing sealed envelopes with the 14 postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California. 15 BY HAND DELIVERY: I caused such envelope to be delivered by hand to the above 16 [ ] address (via Western Messenger). 17 BY OVERNIGHT DELIVERY: I caused such envelope to be delivered to the above [] 18 address within 24 hours by overnight delivery service (via Overnight Express). 19 BY FACSIMILE: I caused such documents to be transmitted by facsimile to the number 20 indicated above. I declare under penalty of perjury under the laws of the State of California that the 21 above is true and correct; executed on August 7, 2008, at San Francisco, California. 22 23 24 25 26 27

Case No.

28

PROOF OF SERVICE

## Exhibit C

1 2	KATHLEEN MAYLIN (State Bar No. 155371) JOHN A. ONTIVEROS (State Bar No. 225706)	
3	JACKSON LEWIS LLP 199 Fremont Street, 10th Floor	
	San Francisco, California 94105 Telephone: (415) 394-9400	
4	Facsimile: (415) 394-9401	
5	Attorneys for Defendant	
6	CHERNE CONTRACTING CORPORATION	
7		
8	UNITED STATES D	
9	NORTHERN DISTRIC	T OF CALIFORNIA
10	VICTOR GONZALEZ,	Case No.
11	Plaintiff,	DECLARATION OF DOMINIQUE
12	V.	NAJJAR IN SUPPORT OF NOTICE OF REMOVAL OF ACTION
13	CHERNE CONTRACTING CORPORATION, a	[28 U.S.C. SECTION 1441(a) and (b)
14	business entity of unknown form; and DOES 1 TO 25, INCLUSIVE,	(DIVERSITY JURISDICTION)]
15	Defendants.	
16	Defendants.	
17		
18	I, Dominique Najjar, do hereby declare as f	follows:
19	1. I am currently the Vice President/	Chief Financial Officer for Cherne Contracting
20	Corporation ("Cherne" or "Defendant"). I have	personal knowledge of the matters set forth
21	below, and if called to testify, I could and would te	stify as follows.
22	2. Cherne was incorporated under the	e laws of the State of Michigan. Cherne's
23	headquarters and its executive and administrative	offices are located in Minneapolis, Minnesota
24	Although Defendant conducts business in the cont	inental United States, it controls its nationwide
25	operations from Minnesota, where the majority	of Defendant's executive and administrative
26	functions are performed. Most of Defendant's	executive and administrative employees are
27	located in Minnesota.	
28	3. Attached as <b>Exhibit 1</b> is a true an	d correct report of the wages paid by Cherne
	I	

1	Contracting to Victor Manuel Gonzalez ("Gonzalez") from August 9, 2006, through July 22,
2	2007.
3	4. Cherne Contracting employed Gonzalez to work on a project in the State of
4	California. The project was substantially completed on or about April 26, 2008.
5	5. Attached as Exhibit 2 is a true and correct report of the benefits (health and
6	welfare, pension, annuity and other benefits) paid by Cherne Contracting for Victor Gonzalez
7	from August 9, 2006, through July 22, 2007.
8	I declare under penalty of perjury under the laws of the United States of America that the
9	foregoing is true and correct.
10	Executed in Minneapolis, Minnesota on August $\frac{S}{L}$ , 2008.
1	Many hall
12	Dominique Najjar
13	Dominique Najjai
۱4	
15	
16	
۱7	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
- 1	2

DECLARATION IN SUPPORT OF NOTICE OF REMOVAL

Case No.

### **EXHIBIT 1**

Report for: Gonzalez, Victor Manuel S

REDACT

WE Date	Home Dept	ST Hours	ST Gross	Bonus Hours	Bonus Gross	Total Gross Amt
08/13/06°	33RL3X	20.00	\$523.40	201,22 110 110		\$523.40
08/20/06	33RL3X	41.75	\$1,092.60	1.75	\$41.81	\$1,134.41
08/27/06	33RL3X	41.50	\$1,086.06	1.50	\$35.84	\$1,121.90
09/03/06	33RL3X	40.00	\$1,046.80		•	\$1,046.80
09/10/06	33RL3X	20.00	\$523.40			\$523.40
10/22/06	33RL2X	50.00	\$1,313.50	5.00	\$119.95	\$1,450.10
10/29/06	33RL2X	60.00	\$1,576.20	10.00	\$239.90	\$1,816.10
11/05/06	33RL2X	60.00	\$1,576.20	10.00	\$239.90	\$1,816.10
11/12/06	33RL2X	67.50	\$1,773.23	17.50	\$419.83	\$2,193.06
11/19/06	33RL2X	50.00	\$1,313.50	10.00	\$239.90	\$1,553.40
11/26/06	33RL2X	31.25	\$820.94	1.00	\$23.99	\$844.93
12/03/06	33RL2X	50.00	\$1,313.50	10.00	\$239.90	\$1,553.40
12/10/06	33RL2X	75.00	\$2,010.50	24.75	\$622.22	\$2,632.72
12/17/06	33RL2X	50.00	\$1,313.50	5.00	\$119.95	\$1,433.45
12/24/06	33RL2X	51.00	\$1,339.77	5.50	\$131.95	\$1,471.72
12/31/06	33RL2X	44.00	\$1,189.89	10.50	\$252.90	\$1,442.79
01/21/07	33RL2X	50.00	\$1,313.50	10.00	\$239.90	\$1,553.40
01/28/07	33RL2X	60.00	\$1,576.20	10.00	\$239.90	\$1,816.10
02/04/07	33RL2X	60.50	\$1,589.34	10.25	\$245.90	\$1,835.24
02/11/07	33RL2X	44.00	\$1,155.88	7.00	\$167.93	\$1,323.81
02/18/07	33RL2X	60.00	\$1,576.20	10.00	\$239.90	\$1,816.10
02/25/07	33RL2X	50.00	\$1,313.50	10.00		\$1,553.40
03/04/07	33RL2X	57.50	\$1,510.53	10.00	\$239.90	\$1,750.43
03/11/07	33RL2X	61.00	\$1,602.47	11.00	\$263.89	\$1,866.36 \$1,553.40
03/18/07	33RL2X	50.00	\$1,313.50	10.00	\$239.90	\$1,553.40 \$1,816.40
03/25/07	33RL2X	60.00	\$1,576.20	10.00	\$239.90	\$1,816.10 \$1,816.10
04/01/07	33RL2X	60.00	\$1,576.20	10.00	\$239.90	\$1,816.10 \$1,433.45
04/08/07	33RL2X	50.00	\$1,313.50	5.00	\$119.95	\$1,816.10
04/15/07	33RL2X	60.00	\$1,576.20	10.00 5.00	\$239.90 \$119.95	\$1,433.45
04/22/07	33RL2X	50.00	\$1,313.50	5.00	φ11 <del>3</del> .33	\$1,050.80
04/29/07	33RL2X	40.00	\$1,050.80	5.00	\$119.95	\$645.35
05/06/07	33RL2X	20.00	\$525.40	10.00		\$1,816.10
05/13/07	33RL2X	60.00 56.00	\$1,576.20 \$1,471.12	8.00	· ·	\$1,663.04
05/20/07	33RL2X	49.00	\$1,471.12	4.50	\$107.96	\$1,395.19
05/27/07 06/03/07	33RL2X 33RL2X	48.00	\$1,267.25	9.00		\$1,476.87
	33RL2X	58.00	\$1,523.66	9.00		\$1,739.57
06/10/07		58.00	\$1,523.66	9.00		\$1,739.57
06/17/07	33RL2X 33RL2X	48.00	\$1,323.00	4.00		\$1,356.92
06/24/07	33RL2X 33RL2X	60.50	\$1,649.84	10.25		\$1,905.99
07/01/07 07/08/07	33RL2X	48.50	\$1,322.60	9.25		\$1,553.76
07/06/07	33RL2X	50.00	\$1,363.50	5.00		\$1,488.45
07/13/07	33RL2X	52.00	\$1,418.04	6.00		\$1,567.98
01122101	TOTALS:		\$57,353.68	329.75		\$65,340.71

### EXHIBIT 2

Employee	Day	ST Hours	PT Hours	Fringe Rate	Total Fringe
GONZALEZ, VICTOR MANUEL S	8/9/2006	10	0	\$10.22	\$102.20
GONZALEZ, VICTOR MANUEL S	8/10/2006	10	0	\$10.22	\$102.20
GONZALEZ VICTOR MANUEL S	8/14/2006	10	0	\$10.22	\$102.20
GONZALEZ, VICTOR MANUEL S	8/15/2006	10.5	0.5	\$10.22	\$107.31
GONZALEZ, VICTOR MANUEL S	8/16/2006	10.5	0.5	\$10.22	\$107.31
GONZALEZ, VICTOR MANUEL S	8/17/2006	10.75	0.75	\$10.22	\$109.87
GONZALEZ, VICTOR MANUEL S	8/21/2006	10.5	0.5	\$10.22	\$107.31
GONZALEZ, VICTOR MANUEL S	8/22/2006	10.5	0.5	\$10.22	\$107.31
GONZALEZ, VICTOR MANUEL S	8/23/2006	10.5	0.5	\$10.22	\$107.31
GONZALEZ, VICTOR MANUEL S	8/24/2006	10	0	\$10.22	\$102.20
GONZALEZ, VICTOR MANUEL S	8/28/2006	10	0	\$10.22	\$102.20
GONZALEZ, VICTOR MANUEL S	8/29/2006	10	0	\$10.22	\$102.20
GONZALEZ, VICTOR MANUEL S	8/30/2006	10	0	\$10.22	\$102.20
GONZALEZ, VICTOR MANUEL S	8/31/2006	10	0	\$10.22	\$102.20
GONZALEZ VICTOR MANUEL S	9/5/2006	10	0	\$10.24	\$102.40
GONZALEZ VICTOR MANUEL S	9/6/2006	10	0	\$10.24	\$102.40
GONZALEZ VICTOR MANUEL S	10/16/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	10/17/2006	10	0	\$10.24	\$102.40
GONZALEZ VICTOR MANUEL S	10/18/2006	10	0	\$10.24	\$102.40
GONZALEZ VICTOR MANUEL S	10/19/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	10/20/2006	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	10/22/2006	0	0	\$10.24	\$0.00
GONZALEZ, VICTOR MANUEL S	10/23/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	10/24/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	10/25/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	10/26/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	10/27/2006	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	10/28/2006	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	10/30/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	10/31/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	11/1/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	11/2/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	11/3/2006	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	11/4/2006	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	11/6/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	11/7/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	11/8/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	11/9/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	11/10/2006	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	11/11/2006	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	11/12/2006	7.5	7.5	\$10.24	\$76.80
GONZALEZ, VICTOR MANUEL S	11/14/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	11/15/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	11/16/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	11/17/2006	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	11/18/2006	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	11/20/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	11/21/2006	10.5	0.25	\$10.24	\$107.52
GONZALEZ, VICTOR MANUEL S	11/21/2006	0.75	0.75	\$10.24	\$7.68
GONZALEZ, VICTOR MANUEL S	11/22/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	11/28/2006	10	0	\$10.24	\$102.40

GONZALEZ, VICTOR MANUEL S	11/29/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	11/30/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	12/1/2006	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	12/2/2006	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	12/4/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	12/5/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	12/6/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	12/7/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	12/8/2006	10	5	\$10.24	\$102.40
GONZALEZ VICTOR MANUEL S	12/8/2006	2	2	\$10.24	\$20.48
GONZALEZ, VICTOR MANUEL S	12/9/2006	10.5	5.25	\$10.24	\$107.52
GONZALEZ VICTOR MANUEL S	12/9/2006	4	4	\$10.24	\$40.96
GONZALEZ, VICTOR MANUEL S	12/10/2006	8.5	8.5	\$10.24	\$87.04
GONZALEZ, VICTOR MANUEL S	12/11/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	12/12/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	12/13/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	12/14/2006	10	. 0	\$10.24	\$102.40
GONZALEZ VICTOR MANUEL S	12/15/2006	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	12/18/2006	10.5	0.25	\$10.24	\$107.52
GONZALEZ, VICTOR MANUEL S	12/19/2006	10.5	0.25	\$10.24	\$107.52
GONZALEZ, VICTOR MANUEL S	12/20/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	12/21/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	12/22/2006	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	12/26/2006	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	12/27/2006	5	0	\$10.24	\$51.20
GONZALEZ, VICTOR MANUEL S	12/27/2006	8.5	0.25	\$10.24	\$87.04
GONZALEZ, VICTOR MANUEL S	12/29/2006	10.5	5.25	\$10.24	\$107.52
GONZALEZ, VICTOR MANUEL S	12/30/2006	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	1/16/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	1/17/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	1/18/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	1/19/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	1/20/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	1/22/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	1/23/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	1/24/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	1/25/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	1/26/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	1/27/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	1/29/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	1/30/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	1/31/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	2/1/2007	10.5	0.25	\$10.24	\$107.52
GONZALEZ, VICTOR MANUEL S	2/2/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	2/3/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	2/5/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	2/7/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	2/8/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	2/9/2007	4	2	\$10.24	\$40.96
GONZALEZ, VICTOR MANUEL S	2/10/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	2/12/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	2/13/2007	10	0	\$10.24	\$102.40

GONZALEZ, VICTOR MANUEL S	2/14/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	2/15/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	2/16/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	2/17/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	2/20/2007	10	Ö	\$10.24	\$102.40
•	2/21/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	2/22/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S		10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	2/23/2007		5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	2/24/2007	10		\$10.24 \$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	2/26/2007	10	0	•	\$102.40
GONZALEZ, VICTOR MANUEL S	2/27/2007	10	0	\$10.24	•
GONZALEZ, VICTOR MANUEL S	2/28/2007	7.5	0	\$10.24	\$76.80
GONZALEZ, VICTOR MANUEL S	3/1/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/2/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/3/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/5/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/6/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/6/2007	1	1	\$10.24	\$10.24
GONZALEZ, VICTOR MANUEL S	3/7/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/8/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/9/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/10/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/12/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/14/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/15/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/16/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/17/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/19/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/20/2007	10	Ö	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/21/2007	10	Ö	\$10.24	\$102.40
·	3/22/2007	10	Ö	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/23/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/24/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/26/2007	10	0	\$10.2 <del>4</del>	\$102.40
GONZALEZ, VICTOR MANUEL S		10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/27/2007		_	\$10.24 \$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/28/2007	10	0	\$10.2 <del>4</del> \$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/29/2007	10	0	\$10.2 <del>4</del> \$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	3/30/2007	10	5	•	\$102.40
GONZALEZ, VICTOR MANUEL S	3/31/2007	10	5	\$10.24	•
GONZALEZ, VICTOR MANUEL S	4/2/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	4/3/2007	10	0	\$10.24	\$102.40
GONZÁLEZ, VICTOR MANUEL S	4/4/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	4/5/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	4/6/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	4/9/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	4/10/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	4/11/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	4/12/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	4/13/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	4/14/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	4/16/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	4/17/2007	10	0	\$10.24	\$102.40
·					

GONZALEZ, VICTOR MANUEL S	4/18/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	4/19/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	4/20/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	4/23/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	4/24/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	4/25/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	4/26/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	5/3/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	5/4/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	5/7/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	5/8/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	5/9/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	5/10/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	5/11/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	5/12/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	5/14/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	5/15/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	5/16/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	5/17/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	5/18/2007	8	4	\$10.24	\$81.92
GONZALEZ, VICTOR MANUEL S	5/19/2007	8	4	\$10.24	\$81.92
GONZALEZ, VICTOR MANUEL S	5/21/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	5/22/2007	10.5	0.25	\$10.24	\$107.52
GONZALEZ, VICTOR MANUEL S	5/23/2007	10.5	0.25	\$10.24	\$107.52
GONZALEZ, VICTOR MANUEL S	5/24/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	5/25/2007	8	4	\$10.24	\$81.92
GONZALEZ, VICTOR MANUEL S	5/29/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	5/30/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	5/31/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	6/1/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	6/2/2007	8	4	\$10.24	\$81.92
GONZALEZ, VICTOR MANUEL S	6/4/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	6/5/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	6/6/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	6/7/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	6/8/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	6/9/2007	8	4	\$10.24	\$81.92
GONZALEZ, VICTOR MANUEL S	6/11/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	6/12/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	6/13/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	6/14/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	6/15/2007	10	5	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	6/16/2007	8	4	\$10.24	\$81.92
GONZALEZ, VICTOR MANUEL S	6/18/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	6/19/2007	10	- 0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	6/20/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	6/21/2007	10	0	\$10.24	\$102.40
GONZALEZ, VICTOR MANUEL S	6/23/2007	8	4	\$10.24	\$81.92
GONZALEZ, VICTOR MANUEL S	6/25/2007	10	0	\$11.19	\$111.90
GONZALEZ, VICTOR MANUEL S	6/26/2007	10	0	\$11.19	\$111.90
GONZALEZ, VICTOR MANUEL S	6/27/2007	10	0	\$11.19	\$111.90
GONZALEZ, VICTOR MANUEL S	6/28/2007	10	0	\$11.19	\$111.90
•					

6/29/2007	10.5	5.25	\$11.19	\$117.50
6/30/2007	10	5	\$11.19	\$111.90
7/2/2007	10	0	\$11.19	\$111.90
7/3/2007	10.5	0.25	\$11.19	\$117.50
7/5/2007	10	0	\$11.19	\$111.90
7/6/2007	10	5	\$11.19	\$111.90
7/7/2007	8	4	\$11.19	\$89.52
7/9/2007	10	0	\$11.19	\$111.90
7/10/2007	10	0	\$11.19	\$111.90
7/11/2007	10	0	\$11.19	\$111.90
7/12/2007	10	0	\$11.19	\$111.90
7/13/2007	10	5	\$11.19	\$111.90
7/16/2007	10	0	\$11.19	\$111.90
7/17/2007	10	0	\$11.19	\$111.90
7/18/2007	10	0	\$11.19	\$111.90
7/19/2007	10	0	\$11.19	\$111.90
7/20/2007	10	5	•	\$111.90
7/21/2007	2	1	\$11.19	\$22.38
	6/30/2007 7/2/2007 7/3/2007 7/5/2007 7/6/2007 7/7/2007 7/9/2007 7/10/2007 7/11/2007 7/12/2007 7/13/2007 7/16/2007 7/18/2007 7/18/2007 7/19/2007 7/20/2007	6/30/2007 10 7/2/2007 10 7/3/2007 10.5 7/5/2007 10 7/6/2007 10 7/7/2007 8 7/9/2007 10 7/10/2007 10 7/11/2007 10 7/11/2007 10 7/11/2007 10 7/12/2007 10 7/13/2007 10 7/18/2007 10 7/18/2007 10 7/18/2007 10 7/18/2007 10 7/19/2007 10 7/19/2007 10 7/19/2007 10	6/30/2007       10       5         7/2/2007       10       0         7/3/2007       10.5       0.25         7/5/2007       10       0         7/6/2007       10       5         7/7/2007       8       4         7/9/2007       10       0         7/10/2007       10       0         7/11/2007       10       0         7/13/2007       10       0         7/16/2007       10       0         7/17/2007       10       0         7/18/2007       10       0         7/19/2007       10       0         7/20/2007       10       0         7/20/2007       10       5	6/30/2007       10       5       \$11.19         7/2/2007       10       0       \$11.19         7/3/2007       10.5       0.25       \$11.19         7/5/2007       10       0       \$11.19         7/6/2007       10       5       \$11.19         7/7/2007       8       4       \$11.19         7/9/2007       10       0       \$11.19         7/10/2007       10       0       \$11.19         7/11/2007       10       0       \$11.19         7/13/2007       10       0       \$11.19         7/16/2007       10       0       \$11.19         7/18/2007       10       0       \$11.19         7/19/2007       10       0       \$11.19         7/19/2007       10       0       \$11.19         7/20/2007       10       5       \$11.19         7/20/2007       10       5       \$11.19

\$22,449.12

1 PROOF OF SERVICE I, David T. Casey, declare that I am employed with the law firm of Jackson Lewis LLP. 2 whose address is 199 Fremont Street, 10<sup>th</sup> Floor, San Francisco, California 94105; I am over the 3 age of eighteen (18) years and am not a party to this action. 4 On August 11, 2008, I served the attached: **DEFENDANT'S NOTICE TO STATE** 5 COURT OF REMOVAL in this action by placing a true and correct copy thereof, enclosed in 6 sealed a envelope addressed as follows: 7 8 Christopher B. Dolan Attorney for Plainitff: The Dolan Law Firm Victor Gonzalez 9 1438 Market Street San Francisco, CA 94102 10 Tel.: 415-421-2800 Fax: 415-421-2830 11 Email: cbd@law.com 12 13 [X] BY MAIL: with the United States Postal Service by placing sealed envelopes with the postage thereon fully prepaid, placed for collection and mailing on this date, following 14 ordinary business practices, in the United States mail at San Francisco, California. 15 BY HAND DELIVERY: I caused such envelope to be delivered by hand to the above address (via Western Messenger). 16 BY OVERNIGHT DELIVERY: I caused such envelope to be delivered to the above 17 address within 24 hours by overnight delivery service (via Overnight Express). 18 BY FACSIMILE: I caused such documents to be transmitted by facsimile to the number 19 indicated above. 20 I declare under penalty of perjury under the laws of the State of California that the above is true and correct; executed on August 11, 2008, at San Francisco, California. 21 22. 23 24 25

26

27